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Aspects of a possible legal case against the
Labelling Directive
and its transformation acts in Germany

A. Object of the attack

The two obligatory health warnings are:

1. Smoking causes cancer

2. Smoking causes heart disease

The object of attack are these two health warnings as decreed in the German transformation act which is an update of the existing tobacco ordinance (Änderungsverordnung zur Tabakverordnung).

B. Plaintiff

Everybody can act as a plaintiff who is a affected by the legal obligation imposed by the Änderungsverordnung zur Tabakverordnung. This includes every producer of cigarettes marketed in Germany.

C. Factual arguments

Opinion research shows the following results:

In a representative sample of the German population

- 28 % unequivocally stated that the obligatory warnings ment that every smoker will contract these diseases,

- 8 % stated that a smoker might contract these diseases.

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Source: https://www.industrydocuments.ucsf.edu/docs/ltwk0000

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The direct question whether the health warning ment that every smoker will necessarily contract these diseases drew a 64 % positive response.

No scientific authority in Germany, Europe or anywhere in the world has ever declared that every smoker contracts the above mentioned diseases.

Most of the scientists agree that smoking increases the risk to contract them. *

Only 8 % of the population deduces this correct scientific interpretation from the warning texts.

D. Legal arguments

The legal obligation to proclaim a statement which creates an incorrect impression in a substantial part of the addressees is

1. an infringement of the basic right of the so called negative freedom of expression (negative Meinungsfreiheit) as protected in Article 5 of the German Constitution.

2. An infringement of the basic rights of freedom of occupation and property (Articles 12 and 14 of the German Constitution) which protect each legal commercial activity.

3. A violation of the principle of "State of Law" (Rechtsstaatsprinzip) as proclaimed in Article 20 § 3 of the German Constitution. This principle obliges the state to deal legally and truthfully with its citizens.

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* This conception of risk factor has been expressed by the Federal Government in an answer to ~~a parliamentary~~ question and recently in a programme for the promotion of non-smoking (enclosures). It is intended to refer to these statements in the court case as an correct evaluation of the scientific discussions. By such a move we would practically exclude the possibility of introducing the issue of the health consequences of smoking into the procedure.

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E. Legal procedure

The legal procedure will be the so called Verfassungbeschwerde (constitutional complaint) which can be directed to the German Constitutional Court (Bundesverfassungsgericht) in Karlsruhe.

F. Possible outcome

1. The plaintiffs are turned down because

   a) no violation of basic rights

   b) the Bundesverfassungsgericht declares that it does not protect against human rights violations coming from European legal acts.

2. The transformation act is declared void as far as the attacked health warnings are concerned because of its incompatibility with the German Constitution.

3. The Bundesverfassungsgericht considers

   that the update of the tobacco ordinance constitutes a violation of human rights,

   feels incompetent to protect a German citizen against such a violation coming from a European act,

   asks the European Court of Justice whether the Labelling Directive is compatible with the human rights in the form in which the European Parliament, the Council and the Commission have promised to protect them (Declaration from April 5, 1977, O.J. 1977. C 103 p. 1)

   This decision would start a procedure according to Art. 177 of the Treaty of Rome.

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